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From: Lumino, Karen
Sent: Wednesday, October 21, 2015 3:21 PM
To: Al Senecal
Cc: Hultgren, John; Smith, Michael B; Loughlin, Anni
Subject: 96 Commerce Street, Williston, VT
Attachments: Letter to Senecal Re Tax Sale Sept 2013.pdf

Tracking:	Recipient	Delivery	Read
	Al Senecal		
	Hultgren, John	Delivered: 10/21/2015 3:22 PM	Read: 10/21/2015 3:25 PM
	Smith, Michael B		
	Loughlin, Anni	Delivered: 10/21/2015 3:22 PM	

Al,

I am writing to follow up on our conversation on October 20, 2015 about your planned improvements to your property located at 96 Commerce Street, Williston, Vermont (Lot 07:019:011000) (the Property). The Property is located within the Commerce Street Plume Superfund Site (the Site). As you know, on September 30, 2015, EPA issued its Record of Decision (ROD) establishing a cleanup plan for the Site. In the ROD, EPA outlines its selected remedy to address on-site contamination. A copy of the ROD may be found at: <http://semspub.epa.gov/work/01/582994.pdf>. On July 29, 2015, EPA sent you notification of your opportunity to comment on its proposed cleanup plan.

Specific to your Property, the ROD requires, among other things, the excavation of approximately 630 cubic yards of contaminated soil in the area of the former unlined lagoon and off-site disposal at a licensed facility, in compliance with all applicable RCRA and Vermont hazardous waste regulations. The location of the former lagoon is shown on the figure at the end of this email (extracted from Figure 1 of the ROD). Soils in this area are contaminated with PAHs, arsenic and chromium, and were determined to present a risk to human health. Data indicate that at least some of this material is RCRA-characteristic waste and needs special handling and disposal. In the near-term future, EPA plans to conduct further sampling in the area of the former lagoon on your Property to further delineate the location and extent of soils that need to be excavated.

It is my understanding that you wish to build a new ramp up to a new truck loading door at the back of the building on your Property. On October 20, 2015, you shared an engineering plan, dated September 11, 2015, depicting the location and design of the proposed ramp, among other improvements. The proposed location of this ramp is co-located in the area of the former lagoon that needs to be further sampled and may need to be excavated. Based on our phone conversation and my examination of the plan, proposed construction of the ramp requires, among other things, digging into soils to a depth of two feet below ground surface and moving between three and five cubic yards of soil in order to place two concrete block retaining walls, and the placement of a bituminous concrete top to the ramp.

As EPA has informed you in the past, including by letter, dated September 11, 2013 (attached again for your convenience), and in a conference call on August 21, 2014, an owner who wishes to qualify for the bona fide prospective purchaser (BFPP) exemption to liability under Section 101(40) and 107(r)(1) must meet certain requirements. The BFPP provision is self-implementing, meaning that the purchaser is responsible for

achieving and maintaining BFPP status. EPA recommends you consult with an environmental consultant and legal counsel with respect to meeting and continuing to comply with the BFPP criteria.

Among other requirements, the BFPP provisions require an owner to demonstrate that s/he has met certain continuing obligations, including but not limited to exercising appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to:

- (i) stop any continuing release;
- (ii) prevent any threatened future release; and
- (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.

Until such time as EPA has completed confirmatory sampling to delineate the extent of excavation, the Agency cannot determine if the soils you propose to dig up and relocate are contaminated. If improperly done, the digging, relocation or spreading of contaminated soils may be considered a release of hazardous substances under CERCLA, thereby disqualifying you under the BFPP provision and subjecting you to liability under the Superfund law.

Based on the above, EPA suggests that you locate the ramp in a different location, construct a ramp that does not require digging in the ground, or delay construction of the proposed ramp until EPA has completed confirmatory sampling. If you determine that digging in this area is necessary to build the ramp before EPA has fully delineated the extent of the area impacted by contamination, the excavation and removal of any materials must be done in compliance with all local, state and federal environmental and human health and safety laws. You will have to provide all funding for the project. We recommend you work with an environmental consultant to create a work plan and health and safety plan if you decide to attempt work involving digging in potentially contaminated soils. Please note that materials removed may be contaminated with hazardous substances and subject to RCRA, and therefore require characterization, identification and off-site disposal at a licensed disposal facility.

Please note that if you do build the ramp as planned, at a future time EPA may have to drill holes through the bituminous cap for sampling, and EPA may have to dismantle/dig up the ramp in order to excavate contaminated soils located underneath the ramp.

This email is merely informational based on EPA's understanding of the Site at this time. It is not intended to limit or affect EPA's authority under CERCLA or any other law or to provide a release from CERCLA liability.

I can be reached at 617-918-1348 should you have any questions.
Karen Lumino

